

PREVENTION OF SEXUAL HARASSMENT (PREVENTION, PROHIBITION, REDRESSAL) ACT 2013

Introduction

Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early-'80s. Before 1997, women experiencing SHW had to lodge a complaint under **Section 354** of the Indian Penal Code that deals with the 'criminal assault of women to outrage women's modesty', and **Section 509** that punishes individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officers.

In 1997, the Supreme Court passed a landmark judgment in the case of *Vishakha vs State of Rajasthan* laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act was passed in April 2013 (POSH Act).

Objectives of the Act

- ❖ To provide approachable systems so that women feel confident to report the harassment faced by her.
- ❖ To provide a safe working environment and proper mechanism to conduct inquiry if a woman complains about sexual harassment at workplace.
- ❖ To provide with actions to be taken in case the Respondent is found guilty.

Applicability of the Act

The scope of the applicability of the Act is very wide. It covers within its ambit all types of organizations, public and private, societies, NGOs, institutions and all other types of set-ups.

- ❖ Internal Complaints Committee shall be constituted in offices with more than 10 employees.
- ❖ If an office has less than 10 employees, then complaint can be filed before the Local Complaints Committee.
- ❖ If complaint is against employer, then complaint has to be filed before the Local Complaints Committee
- ❖ As per the Act, complaint can only be filed by woman against a man. The Act specifically caters to sexual harassment against women and does not entertain cases where the Respondent is a woman or the Complainant is a man. However, if

an organisation decided to implement a Gender-Neutral Sexual Harassment Policy, then in terms of said policy, complainant and respondent can be either a man or a woman.

Redressal Mechanism

Internal Complaints Committee (ICC)

This is a Committee that has to be constituted at every office having more than 10 employees. This Committee has to inquire into cases of sexual harassment and come to a conclusion whether the complaint stands proved or not within a period of 3 months.

The members of this Committee must have majority of women as members. The Presiding Officer must be a senior female employee. There must also be one external member who may be part of an NGO that deals in women issues or an advocate that is familiar with such legal issues regarding harassment.

Local Complaints Committee (LCC)

This Committee is constituted at the district level of every state. Organisations that have less than 10 members and do not have an ICC formed, the complainant may approach the Local Complaints Committee for redressal of her complaint.

Definitions

Sexual Harassment: Unwelcome acts or behaviour whether direct or by implication, namely:

- ❖ Physical contact and advances
- ❖ Demand or request for sexual favours
- ❖ Making sexually coloured remarks
- ❖ Showing pornography
- ❖ Any other unwelcome physical, verbal or non- verbal conduct of sexual nature

Aggrieved Woman: Every woman who has been subjected to sexual harassment in organised/ unorganised sectors in public or private offices or domestic workers in household. It also includes regular/ temporary/ ad-hoc/ daily wage employees/ volunteers/ contractual workers, probationer trainees, apprentice, interns or by whatever name they be called.

Employer: The Head who formulates and administer policies of the workplace. A person who discharges contractual obligations for his employees. A person responsible for management, supervision and control of workplace. A person who gains benefits from the employment of a domestic worker.

Workplace:

Organizations, departments, institutions, office etc. including both organised and unorganised public/private sector. Some examples of workplace are hospitals, educational institutions, NGO's, trusts cooperative societies, a dwelling place or a house.

Any place that is visited by the employee during the course of employment (it also includes transportation and the time spent travelling).

Inquiry Proceedings

- ❖ Complaint must be in writing and must be submitted within 90 days from the date of incident. The complaint must also contain the documents sought to be relied upon and list of witnesses.
- ❖ The ICC shall begin the inquiry proceedings and give a copy of the complaint to the Respondent. Respondent shall submit his reply containing the list of documents and witnesses.
- ❖ Cross-Examination shall be allowed for the parties.
- ❖ The Committee is also empowered to conduct its own investigation and summon witnesses and/or documents. The Committee has powers like that of a civil court. Such proceedings are at par at that of a domestic inquiry.
- ❖ While concluding the report, the ICC must recommend whether the complaint stands proven or not.
- ❖ The Inquiry must be completed within 90 days from receiving the complaint.

Duties of Employer

- ❖ Create a safe working environment for women
- ❖ Constitute an Internal Complaints Committee
- ❖ Provide information on the ICC and paste it on notice boards, website and other conspicuous areas
- ❖ Conduct regular sexual harassment trainings and sensitisation programs
- ❖ Submit Annual Report to the concerned authority. This annual report must contain the number of trainings held, number of cases filed and disposed of.
- ❖ Implement a Sexual Harassment Policy (which would contain the procedure to be adopted in dealing with such cases, the penalties that can be awarded to the Respondents etc)
- ❖ Implement the recommendations of the Internal Complaints Committee within 60 days.
- ❖ Give a copy of the Report of the ICC to both the parties

Duties of ICC

- ❖ Provide assistance to the complainant if she wishes to file FIR/Police complaint
- ❖ Inquire into the complaint keeping in view principles of natural justice

- ❖ Tackle the complaint sensitively and urgently
- ❖ Give option of conciliation to the parties prior to initiating inquiry.
- ❖ Inform the parties that the proceedings of the ICC are strictly confidential and cannot be discussed with any third party. This would result in violation of the provisions of the POSH Act.
- ❖ Conclude the inquiry within 90 days of receiving the complaint. If the inquiry takes longer than 90 days, then reasons for delay must be explained in the Inquiry Report.

Role of IATO

Role of IATO as an Association is only that of a Facilitator. In situations when IATO conducts its Annual Conventions, and any untoward incident of sexual harassment where the parties are of two different organisations, then the complaint of sexual harassment would be filed with the ICC in the organisation of the Complainant. IATO would not be liable to conduct the inquiry proceedings. IATO however, can assist the Complainant in filing a police complaint/FIR in case she wishes so.

Even otherwise, IATO does not have staff of 10 and above, so there is no requirement of formation of ICC in IATO.

Illustrations

- In view of the trend in the Tourism industry, there is a lot of interaction between employees of various tour operators, hotels, guides, photographers, tourists, foreign agents etc. All the said categories are covered under the POSH Act as potential complainants. In case, the staff of any of these organisations misbehave with any of the said categories, the complaint for sexual harassment can be filed with the ICC of the said organisation. If the organisation does not have 10 employees, then the same can be filed before the relevant Local Complaints Committee.
- In case the head of the organisation is accused of sexual harassment, and the complainant is a foreigner, it would depend upon the complainant, if she would like to file the complaint before the LCC or file a complaint before the police.
- It is very important to note that the travel time, use of common transport, bus, rail or air where the staff is travelling with guides, tourists and other stakeholders and in the event of any incident, the complaint would lie with the ICC of the organisation who is sponsoring the travel.
- In an organisation where there are more than 10 employees, but no female is employed, then the organisation can choose to constitute a Committee with external female members who are familiar with the issue of women issues and sexual harassment. On the other hand, complaints in such organisations can be sent to the Local Complaints Committee.

Conclusion

The practical problem in this industry is that people who are in the category of visitors may not lodge any complaint, but would ruin the reputation of the tour operator/hotel and other stakeholders. Hence, it is extremely important for every tour operator irrespective of employees to have regular awareness, trainings, talk with the staff and make them aware of the implications of the said Act so that such behaviours can be controlled and deterred.

IATO can play a major role in having regular workshops/webinars/trainings for members and open it to their staff as well, at least once a year.

Compiled by:

Anjana Gosain

Advocate

Phone No.: +91 9810100674

E-mail: anjanagosainchambers@gmail.com

Office: C-30, Basement, Lajpat Nagar-III, New Delhi-110024